

1 COOLEY LLP  
2 RICARDO RODRIGUEZ (No. 173003) (rr@cooley.com)  
3 Five Palo Alto Square  
4 3000 El Camino Real  
5 Palo Alto, CA 94306-2155  
6 Tel: (650) 843-5000  
7 Fax: (650) 857-0663

8 Attorneys for Plaintiff  
9 ABAXIS, INC.

10 GOODWIN PROCTER LLP  
11 J. ANTHONY DOWNS (Pro Hac Admission to be Provided)  
12 (jdowns@goodwinprocter.com)  
13 LANA SHIFERMAN (Pro Hac Vice)  
14 (lshiferman@goodwinprocter.com)  
15 Exchange Place  
16 53 State Street  
17 Boston, MA 02109  
18 Tel: (617) 570-1000  
19 Fax: (617) 523-1231

20 Attorneys for Plaintiff  
21 ALERE SWITZERLAND GMBH

22 POLSINELLI SHUGHART PC  
23 GRAHAM L.W. DAY (No. 186553) (gday@polsinelli.com)  
24 KEITH J. GRADY (Of Counsel) (kgrady@polsinelli.com)  
25 100 S. 4th Street, Suite 1000  
26 St. Louis, MO 63102  
27 Tel: (314) 889-8000  
28 Fax: (314) 622-6709

29 Attorneys for Defendant  
30 MODERN VETERINARY THERAPEUTICS, LLC

31 UNITED STATES DISTRICT COURT  
32 NORTHERN DISTRICT OF CALIFORNIA

33 ABAXIS, INC., a California Corporation and  
34 ALERE SWITZERLAND GMBH, a  
35 Switzerland Entity

36 Case No. 3:10-cv-04549 WHA

37 ~~PROPOSED~~ FINAL CONSENT JUDGMENT

38 Plaintiff,

39 v.

40 MODERN VETERINARY  
41 THERAPEUTICS, LLC, a Florida  
42 Corporation

43 Defendants.

1           Upon the joint motion of all the parties, and for good cause shown, it is hereby  
 2 ORDERED, ADJUDGED and DECREED that:

3           1.       The defendant Modern Veterinary Therapeutics, LLC (“MVT”) and its successors  
 4 and assigns, and each of their respective officers, directors, agents, servants, employees and  
 5 attorneys, and all other persons who are in active concert or participation with any of them are  
 6 hereby permanently restrained and enjoined: (a) from making, using, selling, offering to sell, and  
 7 importing; (b) from actively inducing any other person or entity in making, using, selling,  
 8 offering to sell, and importing; and (c) from offering to sell, selling within the United States, or  
 9 importing into the United States a material or apparatus that is not a staple article or commodity  
 10 of commerce suitable for substantial non-infringing uses, and knowing the same to be especially  
 11 made or especially adapted for use in any procedure, process or method or test corresponding to  
 12 any tests that MVT has designated as Rapid Canine Heartworm Antigen Test Kit, or any  
 13 equivalent thereof, including without limitation any combinations of tests that include any of the  
 14 foregoing until such time as each and every claim of U.S. Patents Nos. 5,714,389 and 6,485,982  
 15 B1 expire, are abandoned, or are held invalid or unenforceable in a final judgment by any court  
 16 with jurisdiction over the subject matter thereof and from which all rights to appeal have been  
 17 exhausted or expired. Nothing contained herein, however, shall be construed to prohibit MVT  
 18 from making, using, selling, offering for sale, or importing such tests or the equivalents thereof in  
 19 the event that MVT lawfully obtains the tests, their equivalents, or the component parts thereof  
 20 from another who has the legal right to make, use, sell, offer for sale, or import such tests or their  
 21 equivalents.

22           2.       MVT, for and on behalf of itself and its successors and assigns, acknowledges the  
 23 validity and enforceability of U.S. Patents Nos. 5,714,389 and 6,485,982 B1 and waives the right  
 24 to challenge the validity or enforceability of said patents.

3. The Court retains jurisdiction of this action for purposes of enforcement of the provisions of this Final Consent Judgment **for a period of three years.**

4. Except as otherwise set forth in this Final Consent Judgment, this action and all claims and counterclaims asserted herein are dismissed **WITH PREJUDICE** and without an award of costs or attorney fees to any party.

This entry terminates this action. **THE CLERK SHALL CLOSE THE FILE.**

Dated: April 13, 2011

COOLEY LLP

By: /s/ Ricardo Rodriguez  
Ricardo Rodriguez

Attorneys for Plaintiff Abaxis, Inc.

Dated: April 13, 2011

## GOODWIN PROCTER LLP

By: /s/ *Lana S. Shiferman*  
Lana S. Shiferman

Attorneys for Plaintiff Alere Switzerland  
GmbH.

Dated: April 13, 2011

POLISINELLI SHUGHART PC

by: s/Graham L.W. Day (with permission)  
Graham L.W. Day (Bar No. 186553)

Attorneys for Defendant Modern Veterinary  
Theapeutics, LLC

SO ORDERED.

Dated: April 14, 2011.

